

EXHIBIT B

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HEALTHY SOLUTIONS, LLC,
HEALTH SOLUTIONS, INC.
and ALEJANDRO GUERRERO

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
EASTERN DIVISION

FILED

HEALTHY SOLUTIONS, LLC dba
DIRECT BUSINESS CONCEPTS, a
California limited liability corporation,
HEALTH SOLUTIONS, INC., a
California corporation; ALEJANDRO
GUERRERO, an individual;

Plaintiffs,

vs.

ITV DIRECT, INC., a Massachusetts
corporation; and DOES 1-10, inclusive,

Defendants.

Case No. EDCV 04-00236-SGL

FIRST AMENDED COMPLAINT
FOR:

- 1) BREACH OF CONTRACT;
- 2) ACCOUNT STATED;
- 3) OPEN ACCOUNT;
- 4) TRADEMARK INFRINGEMENT &
UNFAIR COMPETITION - § 43(A)
LANHAM ACT;
- 5) COMMON LAW UNFAIR
COMPETITION - PASSING OFF;
- 6) UNFAIR COMPETITION - VIOLATION
VIOLATION RIGHT TO PUBLICITY
(CAL. CIV. CODE 3344);
- 7) UNFAIR COMPETITION - VIOLATION
OF COMMON LAW RIGHT TO
PUBLICITY;
- 8) VIOLATION OF CALIFORNIA
UNFAIR TRADE PRACTICES, CAL.
BUS. & PROF. CODE §§ 17200
ET. SEQ.;
- 9) CONVERSION; AND
- 10) DECLARATORY JUDGMENT.

DEMAND FOR JURY TRIAL

COPY

1 PLAINTIFFS HEALTHY SOLUTIONS, LLC dba DIRECT BUSINESS
2 CONCEPTS; HEALTH SOLUTIONS, INC., a California corporation; ALEJANDRO
3 GUERRERO, an individual (hereinafter collectively referred to as "HEALTHY
4 SOLUTIONS") allege as follows:

5 JURISDICTION AND VENUE

6 1. PLAINTIFF HEALTHY SOLUTIONS, LLC is a business organized and
7 existing under the laws of the State of California, with its principal offices in San
8 Bernardino County, California.

9 2. PLAINTIFF HEALTH SOLUTIONS, INC. is a business organized and
10 existing under the laws of the State of California, with its principal offices in San
11 Bernardino County, California.

12 3. PLAINTIFF ALEJANDRO ("ALEX") GUERRERO, is an individual who
13 resides in San Bernardino County, California.

14 4. DEFENDANT ITV DIRECT, INC. ("ITV DIRECT") is, upon information
15 and belief, incorporated in the Commonwealth of Massachusetts and its corporate
16 headquarters are located in Beverly, Massachusetts. DEFENDANT is also doing
17 business in this judicial District and has substantial, systematic and continuous contacts
18 with it, in that Defendant sells goods in this District and entered into this contract in this
19 District. DEFENDANT has attended a trade show in this District in part for purposes
20 relating to the claims herein. The claims asserted in this Complaint arose in this District
21 and substantially occurred in this District.

22 5. PLAINTIFFS do not know the true names and capacities, whether individual,
23 corporate, partnership or otherwise of the Defendants named here as DOES 1-10,
24 inclusive. PLAINTIFFS therefore sue these Defendants by such fictitious names.
25 PLAINTIFFS will seek leave of Court to amend this Complaint to assert the DOES'
26 true names and capacities when they have been ascertained.

27 6. This Court has jurisdiction over PLAINTIFFS' federal claims under the laws
28 of the United States, including Title 15 of the United States Code and more particularly,

1 15 U.S.C. 1051-1127, and on 28 U.S.C. §§ 1331, 1338 and 2201-02, and 15 U.S.C. §
2 1 et. seq. In addition and as a distinct basis for jurisdiction, this Court has jurisdiction
3 over this action pursuant to 28 U.S.C. § 1332, as there is diversity of citizenship
4 between the parties, and the amount in controversy exceeds the sum of Seventy Five
5 Thousand Dollars (\$75,000.00), exclusive interest and costs. Venue is proper in this
6 District under 28 U.S.C. §1391(a), (b) and (c).

7 FACTS COMMON TO ALL CLAIMS FOR RELIEF

8 The Product

9 7. PLAINTIFFS formulated a nutritional supplement based on enhanced and
10 organically grown vegetables, grains, grasses and herbs ("the Product") which
11 PLAINTIFFS named Supreme Greens with MSM. The ingredients include *inter alia*
12 alfalfa, parsley, carrot, shave grass, rosemary, beet, celery, dandelion, spearmint, corn
13 silk, grapefruit, peppermint, white willow, broccoli, cabbage, bilberry, echinacea, okra,
14 raspberry, sage, spinach, strawberry, watercress, wheat grass, wintergreen, ginger,
15 barley, dog grass, wheat, garlic, kale, Pau d'arco, slippery elm, goldenseal, aloe and
16 methylsulfonymethane, commonly known as MSM. Genuine "Supreme Greens" does
17 not contain caffeine, artificial flavors, artificial colors, artificial fragrances, dairy
18 products or glutens. The precise formula is a trade secret and proprietary. The Product
19 formula has never been disclosed to Defendant ITV DIRECT.

20 8. Supreme Greens was developed based on the academic studies and the
21 nutritional and herbal therapy practice of PLAINTIFF Alejandro ("Alex") Guerrero,
22 O.M.D. PLAINTIFF Guerrero has been trained in the use of traditional Chinese
23 medicine and has a Master of Science in Oriental Medicine. His studies included
24 extensive work in nutritional and herbal therapies based on traditional and ancient
25 Chinese models and western science.

26 9. In working with clients for over ten years who sought Dr. Guerrero's help for
27 ailments as diverse as chronic pain from injury or illness, depression, chronic ailments
28 like arthritis and diabetes, and even terminal illness such as cancers, Dr. Guerrero

1 concluded proper nutrition is essential to good health. Good nutrition supports and
2 enhances treatment under conventional western medicine and assists wellness goals
3 such as reducing stress and weight loss. Dr. Guerrero, however, was frustrated by the
4 nutritional supplements available in the market. He sought to develop a healthy
5 supplement that he knew to be safe and of the highest quality. The result was the
6 proprietary formula for Supreme Greens ("Product"). Supreme Greens is available in
7 powder form or in capsule form. A photograph is attached as Exhibit A.

8 10. In preparing to manufacture and distribute Supreme Greens, PLAINTIFFS
9 reviewed the processes and procedures of each bottling plant for safety and quality.
10 PLAINTIFFS expended significant amounts of money and time in establishing the
11 quality of the Supreme Greens Product. PLAINTIFFS have taken reasonable steps to
12 protect the secret formula for the Product.

13 The Mark "Supreme Greens"

14 11. PLAINTIFFS chose the name "Supreme Greens," designed labels and
15 worked to find manufacturers and distributors. PLAINTIFFS first used the name
16 "Supreme Greens" in its correspondence and conversations with Defendant, a potential
17 distributor, as early as December 2002, when PLAINTIFFS presented the Defendant
18 with a sample of the Product and sample labels. Exhibit B.

19 12. PLAINTIFFS ordered and paid for Product bearing the Supreme Greens
20 mark as early as May 2003. PLAINTIFFS sold Product bearing the name "Supreme
21 Greens" in interstate commerce at least as early as June 2003. PLAINTIFFS have
22 continuously and exclusively used the name "Supreme Greens" and offered its Product
23 bearing the mark "Supreme Greens" and has expanded its business geographically
24 throughout the United States and internationally, including through an Internet web site.
25 PLAINTIFFS have entered into distribution agreements and licenses for a variety of
26 marketing channels including via the Internet and sales to a variety of retailers.

27 13. Today, the company enjoys a reputation for excellence and quality under the
28 Supreme Greens trade name and marks throughout the United States and

1 internationally. PLAINTIFFS have expended considerable sums in advertising the
2 trade name and marks "Supreme Greens" and have exerted every effort to maintain the
3 highest standards of quality for the Product. This has created invaluable goodwill under
4 the trade name and marks among its purchasing public and Supreme Greens has
5 become associated in the minds of purchasers with PLAINTIFFS.

6 14. The quality and characteristics of the SUPREME GREENS Product is often
7 advertised and displayed in connection with the likeness and name of Dr. Guerrero and
8 it is closely associated with his name and likeness. Examples of the strong association
9 between Plaintiff Guerrero's name and likeness are attached as Exhibit C.

10 15. Comments, complaints and praise relating to the Supreme Greens product are
11 directed to Plaintiffs.

12 16. DEFENDANT has had actual notice and full knowledge of PLAINTIFFS'
13 rights in the "SUPREME GREENS" trade name and marks since the mark was
14 presented to Defendant in December 2002.

15 17. The Product has been successful, with orders coming in from all of North
16 America. PLAINTIFFS have sold more than 475,000 bottles of "SUPREME
17 GREENS" worldwide.

18 The Agreement

19 18. On or about April 4, 2003, PLAINTIFFS entered into a Distribution
20 Agreement with Massachusetts's television infomercial producer, Defendant ITV
21 DIRECT, INC. Defendant ITV DIRECT, INC. was granted exclusive right to
22 distribute Supreme Greens through the "direct response telemarketing channel," in other
23 words, infomercials. A copy of the Distributorship Agreement is attached as Exhibit D.
24 The Agreement includes a license to use Plaintiffs' marks and a license to sell, but not
25 to manufacture, the Product.

26 19. As part of the Distribution Agreement, PLAINTIFFS designated Dr.
27 Guerrero to be the spokesperson for Supreme Greens in infomercials scripted and
28 produced by the Defendant. Editorial control was exclusively with Defendant. It is Dr.

1 Guerrero's name, likeness, voice, credentials and experience that are featured in
2 Defendant's infomercials for Supreme Greens. Indeed, Dr. Guerrero has been contacted
3 by members of the public who have seen Supreme Greens and identify it and associate
4 it with him.

5 20. PLAINTIFFS are informed and believe that Defendant completed production
6 of its infomercial and began airing it on cable television in 30-minute spots no earlier
7 than August or September of 2003. Defendant is also selling Supreme Greens via the
8 Internet from a website leased from Plaintiffs.

9 21. Beginning with invoices from December 2003, Defendant failed to pay for
10 Product delivered to it, a direct and material violation of the Agreement. Total invoices
11 for One Million Eight Hundred Twenty One Thousand Eight Hundred Sixty Four
12 Dollars (\$1,821,864.00) are now past due and owing. A demand for cure has been
13 made and ignored, with the time for cure pursuant to the terms of the Agreement having
14 passed.

15 22. On or about March 2, 2004, Defendant filed an action against Plaintiffs in
16 the United States District Court for the District of Massachusetts improperly asserting
17 *inter alia* ownership of the Supreme Greens mark, a clear repudiation of the Agreement
18 barred by the Agreement and the doctrine of licensee estoppel. A copy of the
19 Complaint, which has never been served upon Plaintiffs, is attached as Exhibit E.

20 23. On or about March 24, 2004, Defendant informed PLAINTIFFS that it had
21 ordered approximately 50,000 bottles of alleged "product" from an unidentified
22 manufacturer. Defendant admitted that the so-called "product" bears the Supreme
23 Greens mark. Later, Defendant stated again it had ordered 50,000 bottles of the non-
24 genuine product. PLAINTIFFS demanded to know the source of this phony product
25 and its contents. Defendant refused to identify manufacturer and refused to provide the
26 formula being used.

27 24. The Agreement between PLAINTIFFS and DEFENDANT and all
28 appurtenant licenses and rights has expired, been repudiated and materially breached,

1 and all licenses, consents and authority to use the mark "Supreme Greens" or the
2 likeness, image, voice or name of Plaintiff Guerrero are invalid, expired and revoked.

3 FIRST CAUSE OF ACTION

4 BREACH OF CONTRACT

5 25. PLAINTIFFS reallege and incorporate herein the allegations of paragraphs 1
6 through 24.

7 26. PLAINTIFFS have performed all conditions, covenants, and promises
8 required on its part to be performed in accordance with the terms and conditions of the
9 Agreement.

10 27. DEFENDANT breached the Agreement in failing to pay as agreed for
11 products delivered to Defendant. The outstanding and past due invoices are attached
12 hereto as Exhibit F and by this reference incorporated herein.

13 28. DEFENDANT breached the Agreement in asserting ownership of the mark
14 and name "Supreme Greens" during the term of the agreement in violation of its duties
15 as a licensee.

16 29. DEFENDANT breached the Agreement in applying the "Supreme Greens"
17 mark to non-genuine product in violation of its duties as a licensee.

18 30. PLAINTIFFS have repeatedly demanded payment and full performance of
19 the Agreement by Defendant; however, Defendant has refused to pay the sums past due
20 and owing.

21 31. In addition, on information and belief, the Agreement has been repudiated in
22 its entirety by Defendant's failure to pay, Defendant's production of phony and
23 unauthorized Product, and Defendant's filing of a lawsuit claiming *inter alia* ownership
24 of the mark.

25 32. As a result of Defendant's breach of the Agreement, PLAINTIFFS have
26 been damaged in the sum to be proven at trial, but in no event less than One Million
27 Eight Hundred Twenty One Thousand Eight Hundred Sixty Four Dollars
28 (\$1,821,864.00).

1 SECOND CAUSE OF ACTION

2 ACCOUNT STATED

3 33.PLAINTIFFS reallege paragraphs 1 through 32 above, inclusive, of this
4 Complaint and incorporate them herein by this reference as if set forth in full below.

5 34. The invoices attached hereto as Exhibit F constitute an account stated for
6 which payment is past due and owing, with interest accruing thereon from the date of
7 each invoice at the highest rate allowed by law in an amount to be proven at trial but in
8 any event not less than One Million Eight Hundred Twenty One Thousand Eight
9 Hundred Sixty Four Dollars (\$1,821,864.00).

10 THIRD CAUSE OF ACTION

11 OPEN ACCOUNT

12 35.PLAINTIFFS reallege paragraphs 1 through 34 above, inclusive, of this
13 Complaint and incorporate them herein by this reference as if set forth in full below.

14 36.DEFENDANT's failure to pay the sums due as herein alleged constitute an
15 open book account for goods delivered, specifically an estimated 303,644 units of
16 Supreme Greens product, at the special instance and request of Defendant.

17 37. Although demand has been made, there is now due, owing and unpaid a sum
18 in an amount to be proven at trial but in any event not less than One Million Eight
19 Hundred Twenty One Thousand Eight Hundred Sixty Four Dollars (\$1,821,864.00)
20 with interest accruing thereon at the highest rate allowed by law.

21 FOURTH CAUSE OF ACTION

22 TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION IN

23 VIOLATION OF §43(A) THE LANHAM ACT

24 38.PLAINTIFFS reallege paragraphs 1 through 37 above, inclusive, of this
25 Complaint and incorporate them herein by this reference as if set forth in full below.

26 39.DEFENDANT, in violation of 15 U.S.C. § 1125 (a), Section 43(a) of the
27 Lanham Act, has infringed the mark "Supreme Greens", owned by PLAINTIFFS, by
28 affixing it to non-genuine products of unknown origin and unknown quality.

1 40.DEFENDANT's conduct constitutes false designation of origin, false or
2 misleading description and false or misleading statements of fact, likely to cause
3 confusion or mistake as to the origin, sponsorship and/or approval of goods being sold,
4 including among other things confusion or mistake with genuine Product and the
5 sponsorship and approval of Plaintiff GUERRERO.

6 41.Purchasers are likely to purchase DEFENDANT's goods bearing the
7 "SUPREME GREENS" mark believing they are PLAINTIFFS', thereby resulting in a
8 loss of sales and other damages to the PLAINTIFFS, including but not limited to
9 damage to goodwill, lost sales, the cost of a corrective advertising campaign, and/or a
10 reasonable royalty, in an amount to be proven at trial and which, upon information and
11 belief, will be in a sum of not less than Three Million Dollars (\$3,000,000.00).

12 42.Upon information and belief, and based upon an estimate only since the sales
13 and other records are solely within DEFENDANT's possession, custody and control,
14 as a direct and proximate result of DEFENDANT's infringement, PLAINTIFFS are
15 entitled to DEFENDANT's gross revenues from the infringement, interest, costs and
16 consequential damages, except for any such legally allowable costs as DEFENDANT is
17 able to prove.

18 43.The goodwill of the PLAINTIFFS' business under its SUPREME GREENS
19 trade names and marks is of tremendous value, and the PLAINTIFFS have suffered and
20 will continue to suffer irreparable harm should infringement be allowed to continue to
21 the detriment of its trade reputation and goodwill, entitling PLAINTIFFS to a
22 preliminary and permanent injunction against such wrongful acts alleged herein.
23 DEFENDANT's infringement will continue unless enjoined by this Court.

24 44.DEFENDANT's acts in its infringing use are likely to damage the reputation
25 and business of PLAINTIFFS, which damage cannot be compensated for by money
26 damages and for which preliminary and permanent injunctive relieve is proper.

27 45.DEFENDANT's acts are knowing and intentional and entitle PLAINTIFFS to
28 treble damages and the award of attorney fees.

FIFTH CAUSE OF ACTION

COMMON LAW UNFAIR COMPETITION –PASSING OFF

46. PLAINTIFFS reallege paragraphs 1 through 45 above, inclusive, of this Complaint and incorporate them herein by this reference as if set forth in full below.

47. PLAINTIFFS own and enjoy common law rights in California and in other parts of the United States in and to the Supreme Greens trade name and marks for the nutritional supplements as set forth above, which are prior to and superior to any rights which DEFENDANT may claim in and to the trademark in any form or style with respect to nutritional supplements.

48. Use by DEFENDANT of the "SUPREME GREENS" trademark on non-genuine product is likely to cause confusion or mistake or deception of purchasers as to the source of origin of its goods or services or their sponsorship or affiliation with PLAINTIFFS.

49. Purchasers are likely to purchase DEFENDANT's goods bearing the "SUPREME GREENS" mark believing they are PLAINTIFFS', thereby resulting in a loss of sales and other damages to the PLAINTIFFS, including but not limited to damage to goodwill, lost sales, the cost of a corrective advertising campaign, and/or a reasonable royalty, in an amount to be proven at trial and which, upon information and belief, will be in a sum of not less than of Three Million Dollars (\$3,000,000.00).

50. Upon information and belief, and based upon an estimate only since the sales and other records are solely within DEFENDANT's possession, custody and control, as a direct and proximate result of DEFENDANT's infringement, PLAINTIFFS are entitled to DEFENDANT's gross revenues from the infringement, interest, costs and consequential damages, except for any such legally allowable costs as DEFENDANT is able to prove.

51. The PLAINTIFFS have no control over the quality of goods sold by DEFENDANT, and because of the confusion as to the source or sponsorship or affiliation engendered by the DEFENDANT, the PLAINTIFFS' valuable goodwill in

1 respect to its aforesaid trade name and trademark is at the mercy of DEFENDANT.

2 52. The goodwill of the PLAINTIFFS' business under its SUPREME GREENS
3 trade name and marks is of tremendous value, and the PLAINTIFFS has suffered and
4 will continue to suffer irreparable harm should infringement be allowed to continue to
5 the detriment of its trade reputation and goodwill, entitling PLAINTIFFS to a
6 preliminary and permanent injunction against such wrongful acts alleged herein.
7 DEFENDANT's infringement will continue unless enjoined by this Court.

8 53. DEFENDANT's introduction of a non-genuine product under the "Supreme
9 Greens" mark, after PLAINTIFFS' prior use of the mark, was done intentionally and
10 knowingly by DEFENDANT, with full knowledge of PLAINTIFFS' prior and superior
11 rights, and in callous and reckless disregard of those rights and the rights of the public,
12 and was malicious, fraudulent or oppressive within the meaning of California's punitive
13 damage statute, entitling PLAINTIFFS to an appropriate amount of punitive damages to
14 deter DEFENDANT and others from following their example, under the claims in this
15 Complaint on which punitive damages are allowable, in an amount to be proven at trial.

16 SIXTH CAUSE OF ACTION

17 UNFAIR COMPETITION – VIOLATION OF PLAINTIFF GUERRERO'S

18 STATUTORY RIGHT TO PUBLICITY (Cal. Civ. Code 3344)

19 54. PLAINTIFFS reallege paragraphs 1 through 53 above, inclusive, of this
20 Complaint and incorporate them herein by this reference as if set forth in full below.

21 55. On information and belief, Defendant is knowingly and wrongfully using the
22 name, voice and/or likeness of PLAINTIFF Guerrero for purposes of advertising or
23 selling, or soliciting purchases of products or merchandise without PLAINTIFF
24 Guerrero's consent or authority in violation of Cal. Civ. Code § 3344, which conduct
25 has and will continue to cause damage to PLAINTIFF Guerrero in an amount to be
26 proven at trial, but in any event not less than One Million Dollars (\$1,000,000.00).
27 DEFENDANT's conduct entitles PLAINTIFF Guerrero to recovery of and to any
28 profits from the unauthorized use of his name, voice and/or likeness.

1 56. On information and belief, DEFENDANT's conduct is continuing and
2 ongoing and will continue if not prohibited by this Court.

3 57. As a direct and proximate result of DEFENDANT's wrongful conduct,
4 PLAINTIFFS will suffer and continue to suffer injury and it has no adequate remedy at
5 law. PLAINTIFFS will be irreparably harmed unless DEFENDANT is immediately
6 and permanently restrained from committing and continuing to commit such wrongful
7 acts.

8 SEVENTH CAUSE OF ACTION

9 UNFAIR COMPETITION –VIOLATION OF PLAINTIFF GUERRERO'S

10 COMMON LAW RIGHT TO PUBLICITY

11 58. PLAINTIFFS reallege paragraphs 1 through 57 above, inclusive, of this
12 Complaint and incorporate them herein by this reference as if set forth in full below.

13 59. On information and belief, DEFENDANT is wrongfully using the name,
14 voice and/or likeness of PLAINTIFF Guerrero for purposes of commercial advantage
15 without PLAINTIFF Guerrero's consent, which conduct has and will continue to cause
16 damage to PLAINTIFF Guerrero in an amount to be proven at trial, but in any event not
17 less than One Million Dollars (\$1,000,000.00).

18 60. DEFENDANT's conduct entitles PLAINTIFF Guerrero to recovery of and to
19 any profits from the unauthorized use of his name, voice and/or likeness.

20 61. On information and belief, DEFENDANT's conduct in continuing and
21 ongoing and will continue if not prohibited by this court.

22 62. As a direct and proximate result of DEFENDANT's wrongful conduct,
23 PLAINTIFFS will suffer and continue to suffer injury and it has no adequate remedy at
24 law. PLAINTIFFS will be irreparably harmed unless DEFENDANT is immediately
25 and permanently restrained from committing and continuing to commit such wrongful
26 acts.

27 //

28 EIGHTH CAUSE OF ACTION

1 **VIOLATION OF CALIFORNIA UNFAIR TRADE PRACTICES, CAL.**
2 **BUS. & PROF. CODE §§17200 et seq.**

3 63.PLAINTIFFS reallege paragraphs 1 through 62 above, inclusive, of this
4 Complaint and incorporate them herein by this reference as if set forth in full below.

5 64.DEFENDANT's actions, as alleged above, constitute unfair competition
6 under California Business & Professions Code Sections 17200 et seq. as they constitute
7 unlawful, unfair and fraudulent acts or practices that are likely to deceive the public as
8 to the origin of its nutritional supplement, and the relationship between PLAINTIFFS
9 and DEFENDANT among other things.

10 65.As a direct and proximate result of DEFENDANT's wrongful conduct,
11 PLAINTIFFS will suffer and continue to suffer injury and it has no adequate remedy at
12 law. PLAINTIFFS will be irreparably harmed unless DEFENDANT is immediately
13 and permanently restrained from committing and continuing to commit such wrongful
14 acts.

15 66.As a direct and proximate result of DEFENDANT's unfair competition,
16 PLAINTIFFS have been damaged as previously alleged, and is entitled to and
17 injunctive relief.

18 **NINTH CAUSE OF ACTION**
19 **CONVERSION**

20 67.PLAINTIFFS reallege paragraphs 1 through 66 above, inclusive, of this
21 Complaint and incorporate them herein by this reference as if set forth in full below.

22 68.On information and belief, DEFENDANTS have been selling and are
23 continuing to sell Product for which they have never paid and are converting the
24 proceeds for unknown uses to which PLAINTIFFS are entitled as payment for the
25 Product. Therefore PLAINTIFFS are entitled to a full accounting of Product sold, and
26 requests a constructive trust of said proceeds until such time as the Court determines all
27 payments due.

28 **TENTH CAUSE OF ACTION**

FOR DECLARATORY RELIEF

69. PLAINTIFFS reallege paragraphs 1 through 68 above, inclusive, of this Complaint and incorporate them herein by this reference as if set forth in full below.

70. DEFENDANT's assertions that PLAINTIFFS are violating DEFENDANT's legal rights and DEFENDANT's claim to ownership of the trade name and mark "SUPREME GREENS" irreparably injure PLAINTIFFS and adversely affects PLAINTIFFS' business, and seeking monetary damages for same, and unless prevented by this Court, will continue to so affect PLAINTIFFS' business, and the immense investment it has made in its trade name and mark "SUPREME GREENS".

71. PLAINTIFFS are entitled to a Declaration that it owns the name and mark "Supreme Greens" and that Defendant's rights as licensee and/or distributor are terminated.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS HEALTHY SOLUTIONS, LLC, HEALTH SOLUTIONS, INC. and ALEJANDRO GUERRERO pray for judgment against DEFENDANT ITV DIRECT, INC. as follows:

MONETARY RELIEF

1. For compensatory damages for breaches of contract to HEALTHY SOLUTIONS, LLC, in a sum to be proven at trial, but in any event not less than One Million Eight Twenty One Thousand Eight Hundred Sixty Four Dollars (\$1,821,864.000);

2. For pre-judgment and post judgment interest at the highest rate allowed by law;

3. That DEFENDANT be required to pay PLAINTIFFS' actual damages, DEFENDANT's profits, damage to PLAINTIFFS' goodwill, lost sales, the costs of a corrective advertising campaign, and/or a reasonable royalty, suffered by PLAINTIFFS, together with interest and costs including prejudgment interest to the fullest extent allowed by law;

1 4. PLAINTIFFS be awarded treble damages to the fullest extent allowed by
2 the law;

3 5. PLAINTIFF GUERRERO be awarded statutory damages for violation of
4 his statutory and/or common law publicity rights in an amount to be proven at trial, but
5 in any event, no less than One Million Dollars (\$1,000,000.00);

6 6. PLAINTIFFS be awarded punitive damages, in an amount to be proven at
7 trial; and

8 7. PLAINTIFFS be awarded its attorney's fees and litigation costs.

9 DECLARATORY RELIEF

10 A Declaratory Judgment that:

11 a. PLAINTIFF HEALTH SOLUTIONS, INC. is the owner of the trade name
12 and mark "SUPREME GREENS" throughout the United States;

13 b. PLAINTIFFS have the right to use, in connection with nutritional
14 supplements and herbs, the SUPREME GREENS trade name and marks free from
15 interference by DEFENDANT, its officers, agents, servants, employees, attorneys,
16 privies, representatives, successors, and assigns, and any and all persons acting by,
17 through, or under authority from DEFENDANT, either separately or jointly, in the
18 United States or in any foreign country where the activities of PLAINTIFFS or
19 DEFENDANT have a substantial effect on interstate or foreign commerce;

20 c. PLAINTIFFS' trade name and mark "SUPREME GREENS" does not
21 violate DEFENDANT's rights under the trademark laws of the United States, the State
22 of California, or any other laws; and

23 d. DEFENDANTS have no right, title or interest in PLAINTIFFS' trade
24 name or mark "Supreme Greens" as a licensee or distributor.

25 INJUNCTIVE RELIEF

26 DEFENDANT, its officers, agents, servants, employees, attorneys, privies,
27 representatives, successors, and assigns, and any and all persons in active concert or
28 participation with or under authority from DEFENDANT, either separately or jointly,

1 be temporarily, preliminarily and permanently enjoined and restrained from:

2 a. Interfering with, or threatening to interfere with, use of the SUPREME
3 GREENS trade name and marks by PLAINTIFFS, its related companies, successors or
4 assigns, in connection with its or their business;

5 b. Instituting or prosecuting any suit or other proceeding placing in issue the
6 right of PLAINTIFFS or said related companies, successors, or assigns, to register or
7 use the SUPREME GREENS trade name and marks in connection with nutritional
8 supplements and herbs;

9 c. That a preliminary injunction and a permanent injunction issue restraining
10 DEFENDANT, its agents, servants, employees, successors and assigns and all others in
11 concert and in privity with them from infringement of PLAINTIFFS' SUPREME
12 GREENS trade name and marks, from injuring PLAINTIFFS' business reputation, from
13 unfairly competing with PLAINTIFFS, and from engaging in unfair and deceptive trade
14 practices;

15 d. That a permanent injunction issue restraining DEFENDANT its agents,
16 servants, employees, successors and assigns and all others in concert and in privity with
17 them from using any confusingly similar mark in any way in SUPREME GREENS's
18 trade areas;

19 e. That a permanent injunction issue compelling DEFENDANT its agents,
20 servants, employees, successors and assigns and all others in concert and in privity with
21 them to destroy all non-genuine product bearing the Supreme Greens mark or any
22 similar marks or dress, and/or the image, name or likeness of Plaintiff ALEJANDRO
23 ("ALEX") GUERRERO and to account therefore to this Court;

24 f. That a permanent injunction issue restraining DEFENDANT its agents,
25 servants, employees, successors and assigns and all others in concert and in privity with
26 them from using the likeness, voice or image of PLAINTIFF ALEJANDRO
27 GUERRERO for any commercial purpose;

28 g. That DEFENDANT is compelled to account for all sales of goods bearing

1 g. That DEFENDANT is compelled to account for all sales of goods bearing
2 a Supreme Greens mark, including the identity of the sources of all goods bearing a
3 Supreme Green mark and to whom the goods were sold;

4 h. That a constructive trust on all proceeds derived DEFENDANT's use of
5 the Supreme Greens mark;

6 i. That DEFENDANT be compelled to account for all sales of non-genuine
7 Supreme Greens product and a constructive trust be imposed on the proceeds of said
8 sales.

9 OTHER RELIEF

10 That PLAINTIFFS have all such other further and general relief as may
11 be just and proper under the circumstances.

12 Respectfully submitted,

13 LEVIN & O'CONNOR

14
15 Dated: April 7, 2004

16 By:



17 Becky V. Christensen, Esq.

18 Craig McLaughlin, Esq.

19 Attorney for PLAINTIFFS

20 HEALTHY SOLUTIONS, LLC,

21 HEALTH SOLUTIONS, INC.,

22 ALEJANDRO GUERRERO
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DEMAND FOR JURY TRIAL

PLAINTIFFS hereby demand trial by jury of all issues so triable in this action pursuant to Federal Rules of Civil Procedure 38(a).

Respectfully submitted,

LEVIN & O'CONNOR

Dated: April 7, 2004

By: 

Becky V. Christensen, Esq.
Attorney for PLAINTIFFS
HEALTHY SOLUTIONS, LLC,
HEALTH SOLUTIONS, INC.,
and ALEJANDRO GUERRERO